

EX PARTE OR LATE FILED

Docket Rm 822

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

22 SEP 1993

92-235

IN REPLY REFER TO:  
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SEP 23 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

Honorable Fred Upton  
House of Representatives  
2439 Rayburn Building  
Washington, D.C. 20515

Dear Congressman Upton:

Thank you for your correspondence of August 13, 1993, concerning motions for a declaratory ruling filed with the Commission by your constituent, Merrill T. See. In his pleadings, Mr. See raises questions regarding the authority of the Commission and the Private Radio Bureau to regulate frequency coordination procedures for private land mobile services.

In his three motions, your constituent requests a declaratory ruling from the Commission's General Counsel as to whether the Commission exceeded its statutory authority by: (1) eliminating the "field study" as a means of frequency coordination and requiring applicants for most private land mobile radio stations to obtain a frequency recommendation from a certified frequency coordinator before applying to the Commission for a license, (2) failing to delegate frequency coordination to frequency committees rather than to coordinators, (3) failing to mandate these committees to be most representative of the users of each radio service, and (4) requiring applicants in the 25-30 MHz band to submit applications to certified coordinators. Mr. See also questioned his rights under the civil rights laws.

Pursuant to 47 C.F.R. §§ 0.131, 0.331, the Private Radio Bureau has been delegated the authority to administer frequency coordination policies and procedures, including oversight of coordinator actions and practices. Thus, it was appropriate for the Office of the General Counsel to refer Mr. See's motions for a declaratory ruling to the Private Radio Bureau. By letter dated August 2, 1993, in response to these motions, the Chief of the Land Mobile and Microwave Division of the Private Radio Bureau concluded that the Commission's 1986 actions adopting the current frequency coordination procedures comported fully with the intent of Congress in adopting the Communications Amendments Act of 1982.

In its correspondence, the Bureau noted that the General Counsel previously and repeatedly responded to Mr. See's inquiries concerning the Commission's statutory authority to eliminate the field study as a coordination option and his rights under the civil rights laws. In this respect, the General Counsel concluded that the Commission had the authority to eliminate the field study option, and also advised your constituent that it would be inappropriate for the Commission, rather than the Justice Department, to issue an advisory opinion concerning the scope and applicability of the federal civil rights laws.

Honorable Fred Upton

2.

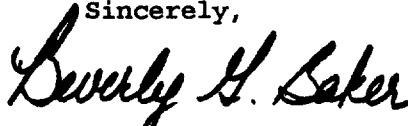
The Bureau concluded in its August 2, 1993, letter, that the distinction between the terms "committees" and "coordinators" was one without merit and that the frequency coordinators selected by the Commission were truly representative of the users of the particular services whose frequencies they coordinate. It was also noted that pursuant to 47 U.S.C. § 332(b)(1) and 47 C.F.R. § 90.175(a), the Commission is authorized to use frequency coordinators for frequencies in the 25-30 MHz band.

In an earlier response to an inquiry from your congressional office, we referred to a number of rule making proceedings, including the Notice of Proposed Rule Making in PR Docket No. 92-235. This reference was intended to indicate that the Commission has under consideration proposals that may provide applicants for licenses in the various private radio services with the ability to obtain a frequency recommendation from the coordinator of their choice. As the proposed rules set forth in PR Docket No. 90-235 are merely under consideration by the Commission, they are not in conflict with the existing coordination rules.

On August 24, 1993, Mr. See filed a Petition for Reconsideration of the August 2, 1993, letter from the Chief of the Private Radio Bureau's Land Mobile and Microwave Division. This Petition is presently under consideration by the Private Radio Bureau.

Thank you for your interest in this matter. I trust this is responsive to your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Beverly H. Baker".

Ralph A. Haller  
Chief, Private Radio Bureau

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HEALTH AND THE ENVIRONMENT  
TRANSPORTATION AND HAZARDOUS MATERIALS  
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ADOPTION COALITION

GREAT LAKES CAUCUS

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CONGRESSIONAL COALITION



**Congress of the United States**  
**House of Representatives**

FRED UPTON  
6TH DISTRICT, MICHIGAN

August 13, 1993

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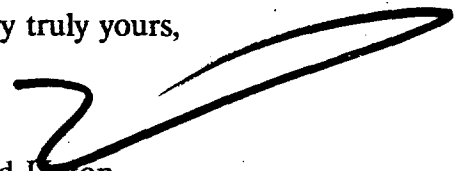
Federal Communications Commission  
Room 808  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Sir/Madam,

The enclosed is of concern to one of my constituents, Merrill See of Kalamazoo, Michigan. I would appreciate it if you would read this letter carefully and respond to my constituent's concern. Please address your response to me at my Washington office.

Thank you very much for your attention to this matter. If I can provide any further information, please do not hesitate to contact Scott Aliferis of my staff at (202) 225-3761. Until then, I remain

Very truly yours,

  
Fred Upton  
Member of Congress

FSU:sa  
Enclosure

PLEASE REPLY TO WASHINGTON OFFICE UNLESS INDICATED: ☐ ST. JOSEPH ☐ KALAMAZOO  
SATELLITE OFFICE HOURS IN THREE RIVERS AND STURGIS. CALL THE OFFICE CLOSEST TO YOU FOR INFORMATION.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

SEP 13 1993  
RECEIVED

Merrill T. See  
5651 North 8th St  
Kalamazoo, MI 49009

7/12

7/7/93  
Fred Upton  
House of Representatives  
Washington, DC 20515

Dear Fred:

Thank you for your letter of 6/30/93 and telephone call 7/12/93 concerning my unanswered three "Motions for A Declaratory Ruling to Terminate a Controversy and Remove an Uncertainty" submitted to the General Council of the Federal Communications Commission on March 12 and March 15, 1993. These Motions were submitted because we feel we have, and have submitted to the FCC General Council, sufficient proofs that the FCC since 1986 is grossly exceeding its Congressional authority. This should be considered a most serious matter and their continual refusal to reply by a formal ruling by the General Council in spite of my continued efforts since 3/12/93 is suspect.

The reply to you as relayed to me in your letter had nothing to do with my request for three Motions for Declaratory Rulings by the FCC General Council on three separate but related issues. This is a General Council matter that cannot be answered by a mere Bureau Chief.

As a matter of fact, the information they sent you from a bureau chief in the copy of your letter to me is irrelevant, and several statements in a different but related Notice of Proposed Rule Making PR Docket 92-235 Released November 6, 1992, clearly refute this statement as false. (See enclosed copies of relevant data circled -- you will note all indications are for protection of the present systems under question.)

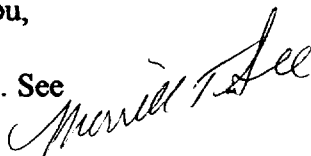
United States Congressman Fred Upton, I think this FCC reply to you is an insult to you, your intelligence, your position, and the intelligence of any average American citizen. These questions to the FCC must be answered at its highest level.

Thank you for your attempt to assist in a very distressing matter. One's faith in his government is certainly tried in a matter like this.

Won't you please assist in forcing the FCC General Council issue a Declaratory Ruling on each of these three enclosed copies of Motions that must include a mutually exclusive yes or no to all questions raised in each Motion?

Thank you,

Merrill T. See



In the Matter of

**REPLACEMENT OF PART 90 BY PART 88 TO REVISE THE PRIVATE LAND MOBILE RADIO SERVICES AND MODIFY THE POLICIES GOVERNING THEM**

PR Docket No. 92-235

Adopted: October 8, 1992  
Released: November 6, 1992  
Comment Date: February 26, 1993  
Reply Comment Date: April 14, 1993

**NOTICE OF PROPOSED RULE MAKING**

By the Commission: Commissioner Barrett issuing a separate statement.

**I. Introduction**

1. On July 2, 1991, we released a Notice of Inquiry (Inquiry) to gather information on how to promote more efficient use of the frequency bands below 512 MHz allocated to the private land mobile radio (PLMR) services. 1 Based on the input received in response to our Inquiry, today we are adopting this Notice of Proposed Rule Making (Notice) that contains a comprehensive set of proposals designed to increase channel capacity in these bands, to promote more efficient use of these channels, and to simplify our policies governing the use of these bands by a wide variety of small and large businesses and public safety agencies throughout this nation. 2 The magnitude of these proposed policy changes makes this an ideal time to create Part 88, and thus correct many unrelated deficiencies that exist in our current rules governing the PLMR services. The proposed rules are in many ways radically different from our current rules. We have, however, attempted to develop a new set of rules that are flexible and simple with regard to the technical and operational characteristics of the private land mobile radio services as well as our mechanisms for licensing users in these services.

2. We are convinced that, without significant regulatory changes in the bands below 512 MHz, the quality of PLMR communications will likely deteriorate to the point of endangering public safety and the national economy. In this proceeding, therefore, our goal is to develop a regulatory scheme that increases channel capacity for PLMR users. We are also sensitive to the need for a reasonable transition period for users to convert their radio systems to newer, more spectrum efficient technologies. These proposals are complex and deserve the full time and attention of all interested parties. In sum, the Notice is a critical step in providing for the future communications needs of private land mobile radio users. We are, therefore, looking forward to their comments and any alternatives that they may have to the proposals we have developed for their consideration.

3. It may be helpful to outline how the proposals in this Notice are presented for consideration. The Notice itself merely presents our proposals in a broad and general form. Readers will find more detail regarding each of our proposals in Appendix A, which explains each major proposal. Readers should also carefully examine Appendix D, the proposed Part 88 that would replace Part 90. To assist in this detailed review, we have provided Appendix E, an index that cross-references proposed rules in Part 88 to current rules in Part 90.

**II. Background**

4. In the past seven decades, PLMR has become one of the largest, most important areas regulated by the Commission. When making new PLMR spectrum allocations, we have generally been innovative and required or induced industry to be innovative. The rules for the bands in use longest have often been amended, yet remain based on much earlier technologies and regulatory concepts. Many PLMR channels are now unacceptably crowded and our rules for certain bands are unacceptably archaic and convoluted. The Inquiry solicited comments on a wide range of technical and policy issues related to the use of the PLMR bands below 512 MHz, with the overall goal of developing modern rules to support future technologies.

5. We received over 120 comments and reply comments. The Private Radio Bureau, in cooperation with the Annenberg Washington Program, Communications Policy Studies, of Northwestern University, also sponsored a conference on this topic on November 14, 1991. Nearly all the commenters appreciated that the Inquiry was a necessary step for insuring that the long term communications needs of the PLMR community are met. Many comments highlighted the invaluable and irreplaceable need for radio spectrum for one and two-way mobile communications. Most commenters suggested that we proceed immediately to increase spectrum efficiency through technical changes as well as various policy changes. In preparing this Notice, we again carefully reviewed the existing environment, with the goal of determining the best possible regulatory framework.

**III. Discussion**

major role in administering exclusivity. The standards for exclusivity, however, must be determined through the rule making process. If user groups have a need to be provided a greater degree of exclusivity for certain types of systems, then they should explicitly state what the standards and eligibility requirements for expanded protection should be. 21

### C. Radio Services

14. Consolidation of the Private Land Mobile Radio services. The Inquiry discussed the possibility of consolidating the present 19 PLMR services or increasing intercategory sharing. 22 We pointed out that channel utilization is not consistent across the 19 user groups. A study of our licensing database in April, 1992, showed very wide variations in usage, often exceeding factors of ten for channels in the same frequency band designated for different radio services. We also noted that "the current allocation system...inhibits spectrum efficiency by making certain spectrum efficient technologies more difficult to implement." 23

15. The Inquiry also discussed the merits of private carriers. We noted that the "private carrier option may be a practical method of making spectrum efficient communications services available to small licensees" 24 and that "[p]rivate carriers have more incentive to enhance spectrum efficiency...." 25

16. Consolidation of service pools generated the widest range of comments to the Inquiry. 26 Several frequency coordinators oppose a proposal to consolidate the current radio services 27 on the grounds that current interservice sharing rules 28 work. They are supported in their views by licensees within these service categories. On the other hand, the Joint Commenters, Associated Public-Safety Communications Officers, Inc. (APCO) and Utilities Telecommunications Council (UTC) all generally favor consolidation. 29 Together, these three sets of comments represent over 75 percent of the licensed transmitters in the affected bands, plus all the licensed PLMR activity above 800 MHz. The Joint Commenters note that, "[w]ithout such a consolidation, the industry may find it cumbersome to implement spectrum efficient technologies...in the bands below 470 MHz." 30 These commenters also maintain that the current interservice sharing rules do not provide adequate relief to an applicant to obtain channels allocated to other service pools because the system is expensive, time-consuming, and burdensome to the applicant, and typically does not provide the applicant the needed spectrum. 31 Numerous other parties favor consolidating radio pools. The State of California states that the "current practice of allocating specific frequency bands to the unique divisions of public safety...causes complications in areas where some bands are underutilized, while others are overcrowded." 32

17. Based on the comments, we believe that some consolidation of the current alignment of radio services may be necessary to realize the maximum benefits of the PLMR spectrum. We thus propose two specific alternatives in this proceeding, both of which are designed to protect all existing users, to assure a smooth transition that minimizes cost to users, and to promote flexibility. Specifically, we propose either to (1) consolidate the current radio services into three broad categories (Public Safety, Non-Commercial and Specialized Mobile Radio) plus a General Category Pool encompassing all three services, or (2) retain the current services and assign to those services their existing frequency assignments but assign all new frequencies to the proposed new broad categories and the General Category pool. The rules proposed in Appendix D present a model based on consolidating the existing services into the three broad service categories, which provides a picture of what a new Part 88 would look like under one set of assumptions. We want to emphasize, however, that we do not have a preference for either of the alternatives set forth herein. Rather, we invite comment on both proposals as well as any other alternative that will fulfill the goals and objectives of this proceeding. Commenters offering alternatives should provide, to the maximum extent possible, the text of specific rules to implement their proposal.

18. Frequency coordination. We propose that frequency coordinators continue to play a major role in managing the PLMR spectrum. We propose that if we adopt option 1 from paragraph 17 above, Public Safety Radio Service applicants would be permitted to use any of the current public safety frequency coordinators. Non-Commercial and General category applicants could use any recognized frequency coordinator. 33 We propose that if we adopt option 2, channels designated for the current 19 narrow radio services would continue to be coordinated only by their current coordinator. Channels designated for the Public Safety Radio Service could be coordinated by any of the existing coordinators for the public safety radio services, and channels designated for the Non-Commercial Radio Service and General Category Pool could be coordinated by any recognized frequency coordinator. Finally, above 800 MHz APCO, NABER and SIRSA would coordinate the same channels they currently coordinate.

19. Currently, frequency coordination is a process in which each applicant was given the best assignment possible. In the future, frequency coordinators should strive to retain as large a spectrum reserve as possible. For example, frequency recommendations should place systems as close geographically as possible without causing interference. Small systems not qualifying for an EUO preference should be stacked on the same channel (vertical loading), rather than be assigned separate channels (horizontal loading).

### D. Technical and Operational Rule Changes

20. Adopt reduced ERP and HAAT Limits. The Inquiry requested comments on reducing the maximum permitted transmitter power level. 34 We noted the advantages of greater reuse of spectrum over geographic space. Many commenters favor some method of limiting emissions, recognizing that many current licensees use far more power than necessary. The State of California cites "a small town of three square miles operat[ing] 250 watt base stations." 35 Public safety entities tended to favor service area contours rather than simple power limits. 36 A 75 watt power limit was recommended by various Land Transportation frequency coordinators. 37 As they point out, the railroad, taxi, and trucking industries all have needs as

## EUO Wide-Area Systems.

The loading criteria discussed in the previous paragraph only directly cover single-site systems, but many PLMR users require multiple sites. Thus, we propose two wide-area system options. The first is identical to the current option for the bands above 800 MHz. Under that option, for a licensee meeting certain eligibility criteria, each mobile would be counted at every site. Under the second option, which would be available to all licensees, loading criteria would be essentially proportional to the total geographic area protected from further licensing when each site is provided the standard 80 kilometer protection. 17 See Appendix D, §§88.277.

## Loading Criteria in the 470-512 MHz Band.

We propose simplifying loading in the 470-512 MHz band in two respects. First, loading now varies according to radio service. We propose fewer categories. Second, loading is now used to cap channel usage in a 20 or 40 mile radius, depending on the urban market and frequency. 18 We propose that loading be used to cap licensing in the entire urban market. See Appendix D, §§88.293.

## Private Land Mobile Radio Services.

Currently there are 21 PLMR services, 19 of which are the focus of this Notice. These services are five current plus one proposed Public Safety Radio Services (Local Government Radio Service, Police Radio Service, Fire Radio Service, Highway Maintenance Radio Service, Forestry-Conservation Radio Service, plus the Emergency Medical Radio Service proposed in PR Docket No. 91-72), the Special Emergency Radio Service, 19 nine Industrial Radio Services (Power Radio Service, Petroleum Radio Service, Forest Products Radio Service, Video Production Radio Service, Relay Press Radio Service, Special Industrial Radio Service, Business Radio Service, Manufacturers Radio Service, Telephone Maintenance Radio Service), and four Land Transportation Radio Services (Motor or Carrier Radio Service, 20 Railroad Radio Service, Taxicab Radio Service, Automobile Emergency Radio Service), in addition to the Radiolocation Radio Service and the Specialized Mobile Radio Service.

As indicated in the text of this Notice of Proposed Rule Making, we propose to either consolidate these radio services into three broad categories (Public Safety, Non-Commercial, and Specialized Mobile Radio Service) plus a General Category Pool encompassing all three broad categories, or retain the current radio service categories and assign to those services their existing frequency assignments but assign all new channels to the proposed three broad categories and the General Category Pool. We do not favor either of these alternatives. We believe, however, that some consolidation is necessary to achieve the maximum benefits from the PLMR spectrum and from the other changes proposed in this Notice of Proposed Rule Making. While the proposed Part 88 and the underlying basis for the broad range of proposals contained herein is predicated on one set of assumptions keyed to consolidating the services into three categories and a general frequency pool, we invite comment on all alternatives that will assist us in writing regulations that maximize the benefits of the PLMR spectrum below 512 MHz.

## Public Safety Radio Service.

We propose to create the Public Safety Radio Service, which would merge six current and proposed PLMR services. This would be the only service with significant eligibility requirements. Frequencies below 470 MHz designated for this service may be coordinated only by the current certified public safety coordinators. Public safety eligibles would also be eligible in the other proposed services. See Appendix D, §§88.13 and 88.613.

## Non-Commercial Radio Service.

We propose to merge the services in subparts C, D and E of Part 90 (generally covering Industrial/Land Transportation) into the Non-Commercial Radio Service. Eligibility in the Non-Commercial Radio Service would be for entities seeking to operate a system for the licensee's internal use. There would be no multiple licensing option for this radio service, 21 although limited selling of excess capacity would be permitted. The proposed rules on management contracts and excess capacity are intended to prevent systems being used to circumvent limits on SMRs use of Non-Commercial Radio Service frequencies. Channels for this radio service would include most of those in subparts C, D and E. 22 Frequencies below 470 MHz designated for this service may be coordinated by any certified coordinator. Above 800 MHz, this service would replace the Industrial/Land Transportation Pool. We expect that such a change would be non-substantive. See Appendix D, §§88.15 and 88.617.

## Specialized Mobile Radio (SMR) Service.

(b) For trunked SMR systems licensed in the 896-901/935-940 MHz band, if at the end of the initial five-year license term the licensee of such a trunked system has not satisfied the loading requirements of paragraph (a) of this section, the licensee requesting renewal of its license will be granted a renewal for only a two-year period. Regardless of the date of the two-year renewal, the licensee will be required to comply fully with the minimum requirements set forth in paragraph (a) of this section at the end of the two-year renewal term.

§88.287 Loading standards for rural trunked systems in the 806-824/851-869 MHz band. - In rural areas, a licensee of a trunked system may request to increase its system capacity by five more channels than it has constructed without meeting the loading requirements specified in §88.285. A rural area is defined for purposes of this section as being beyond a 100-mile radius of the designated centers of the following urbanized areas, as well as those areas that have a waiting list. The identified urbanized areas are: New York, NY; Los Angeles, CA; Chicago, IL; Philadelphia, PA; San Francisco, CA; Detroit, MI; Boston, MA; Houston, TX; Washington, DC; Dallas-Fort Worth, TX; Miami, FL; Cleveland, OH; St. Louis, MO; Atlanta, GA; Pittsburgh, PA; Baltimore, MD; Minneapolis-St. Paul, MN; Seattle WA; San Diego, CA; and Tampa-St. Petersburg, FL. The coordinates for the centers of these areas are referenced in §88.1601. Where waiting lists determine whether an area is rural, the designated centers of those areas will be identified on the actual waiting lists released by the Commission. If a waiting list is later established in a rural area, licensees who have acquired additional channels pursuant to this paragraph will be subject to the automatic cancellation provisions for non-urban systems (see §88.285) at the end of one year from the date the area first appears on a Commission waiting list, or at the end of their license term, whichever is longer.

§88.289 Loading standards for conventional systems in the 806-824/851-869 MHz and 896-901/935-940 MHz bands. - Where an applicant shows that a channel will be loaded to 70 mobile stations, that channel will be made available to that applicant for its exclusive use in the area in which it proposes to operate. If the showing made justifies the assignment of more than one channel to the applicant, additional frequencies will be authorized. Where a licensee does not load a channel to 70 mobiles the channel will be available for assignment to other licensees.

§88.293 Loading standards for the 470-512 MHz band. - (a) Except as provided in paragraph (b) of this section, the maximum channel loading on frequencies in the 470-512 MHz band is as follows:

- (1) 50 units in the Public Safety Radio Service.
- (2) 70 units in the Non-Commercial Radio Service.
- (3) 90 units for SMRs.

(b) If a licensee has exclusive use of a frequency, then the loading standards in paragraph (a) may be exceeded. If it is a shared channel, the loading standards can be exceeded upon submission of a signed statement by all those sharing the channel agreeing to the increase.

(c) Loading standards will be applied in terms of the number of units actually in use or to be placed in use within 8 months following authorization. A licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair. Channel capacity may be reached either by the requirements of a single licensee or by several users sharing a channel. Until a channel is loaded to capacity it will be available for assignment to other users in the same metropolitan area. Following authorization, the licensee must notify the Commission either during or at the close of the 8 month period of the number of units in operation. In the Non-Commercial Radio Service, if the base station facility is to be used by more than a single licensee, the frequency assigned to it will not be reassigned for use by another facility in that metropolitan area for a period of 12 months, provided that the facility is constructed within 90 days from the date of the first grant, meets the loading standards to at least 50 percent within 9 months, and meets all loading standards within 12 months.

## FREQUENCY COORDINATION

§88.305 Frequency coordination requirements. - Except for applications listed in paragraph (d) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in §88.87(a), or for operation at temporary locations in accordance with §88.95, must include a showing of frequency coordination as set forth below. An application to reinstate a license expired for more than thirty (30) days will be considered as a request for a new frequency assignment.

(a) The coordination must include a statement from an applicable frequency coordinator recommending specific frequencies. The coordinator's recommendation may appropriately include comments on technical factors such as power, antenna



(b) Any recommendation is advisory in character and is not an assurance that the Commission will grant a license for operation on that frequency. Therefore, applicants are strongly advised not to purchase radio equipment operating on specific frequencies until a valid authorization has been obtained from the Commission.

(c) Applications for facilities near the Canadian border north of line A or east of line C in Alaska may require coordination with the Canadian government. See Section 1.955 of this chapter.

(d) Exceptions. The following applications need not be accompanied by evidence of frequency coordination:

- (1) Applications for frequencies below 25 MHz.
- (2) Applications for a Federal Government frequency.
- (3) Applications for fixed operations in the 72-76 MHz band. See §88.1189.
- (4) Applications for a frequency to be used for developmental purposes.
- (5) Applications requesting a frequency designated for itinerant operation only.
- (6) Applications for radiolocation operations.
- (7) Applications for SMR only frequencies. See 88.621.

(8) Applications indicating license assignments such as change in ownership, control or corporate structure if there is no change in technical parameters.

(9) Applications for mobile stations if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(10) Applications for control stations operating below 470 or above 800 MHz and meeting the requirements of §88.67(a)(2).

(11) Applications for frequencies in the 216-220, 220-222 and 1427-1435 MHz bands.

(12) Applications timely-filed by recipients of a finder's preference, where the applicant intends to operate at the same site location, and with the same technical parameters as the prior licensee.

(13) Applications for Innovative Shared Use Radio operations.

(e) The following applications need not be accompanied by evidence of frequency coordination, but a copy of these applications must be sent to an applicable frequency coordinator at the same time that they are sent to the Commission: Applications for modification of license that involve a change in the number of mobile transmitters or paging receivers from that authorized as required by §88.87(a). Frequency coordination is necessary, however, when there is a change in authorized stations pursuant to §88.87(b).

#### INTERSERVICE USE

§88.309 Interservice use of frequencies in the 150-174, 421-430, and 450-470 MHz bands. - Frequencies listed as available for eligibles in the Non-Commercial Radio Service are available for inter-category sharing by SMRs under the following conditions:

(a) There are no SMR or General Pool frequencies available in that same frequency band, and

(b) the channels are reassigned from a bona fide Non-Commercial or Public Safety eligible licensed and operating for at least five years on that channel, and

(c) for Non-Commercial and Public Safety systems licensed before [Date of the Report and Order], the new and old licensee must certify that the system manager has not been provided financial compensation resulting from the sale of the

§88.313 Interservice use of frequencies in the 806-821/851-866 MHz and 896-901/935-940 MHz bands. - Frequencies listed as available for eligibles in the Public Safety Radio, Non-Commercial Radio and SMR Services are available for inter-category sharing in the 806-821/851-866 MHz band and in the Public Safety and Non-Commercial Radio Services in the 896-901/935-940 MHz band under the following conditions:

(a) Any channel in the 806-821/851-866 MHz and 896-901/935-940 MHz bands will be available to eligible applicants in the Public Safety and Non-Commercial Radio Services if there are no frequencies in that band in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(b) Channels in the Non-Commercial Radio Service in the 806-821/851-866 MHz band will be available to fully-loaded SMR systems if no 806-821/851-866 MHz SMRS category frequencies are available. Evidence must be provided that the SMR applicant has sufficient users to warrant the authorization of additional channels. If channels are available, the SMR licensee will be authorized no more than one channel more than its current loading warrants.

(c) Channels in the 851-854.750 MHz band are available to fully-loaded trunked systems for expansion subject to the conditions at §88.737.

(d) If, as a result of the addition of General Category channels, an applicant obtains the maximum number of channels possible (one channel more than current loading warrants), and if the applicant is on the SMR waiting list for the geographic area in which it receives the channels, the applicant forfeits its position on the waiting list for that band and market.

(e) Channels in the SMR Service category will be available to fully-loaded Non-Commercial systems if frequencies in that band in their own categories are not available. Evidence must be provided that the applicant has sufficient users to warrant the authorization of additional channels. See §88.91. If available, the licensee will be authorized no more than one channel more than its current loading warrants.

(f) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(g) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

(h) The frequencies 861.0125-861.2375, 862.0125-862.2375, 863.0125-863.2375, 864.0125-864.2375, 865.0125-865.2375 MHz are available on a co-primary basis to stations in Basic Exchange Telephone Radio Service as described in Part 22 of the Commission's Rules.

#### MISCELLANEOUS

§88.317 Protection of certain radio receiving locations. - (a) Any applicant for a new permanent base or fixed station, or for a modification of an existing authorization that would change the frequency, power, antenna height, directivity, or location within the boundaries described in subparagraph (5) of this section must notify the Director, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, W. Va. 24944, in writing, of the technical parameters of the proposal.

(1) The notification must be made prior to, or simultaneously with, the filing of the application with the Commission.

(2) The notification must state the geographical coordinates of the antenna, antenna height, antenna directivity, proposed frequency, type of emission, and effective radiated power.

(3) After receipt of such applications, the Commission will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(4) The provisions of this paragraph do not apply to applications for mobile, temporary base, or temporary fixed stations.